

Assembly Bill No. 2323

CHAPTER 262

An act to amend Sections 17209, 17212.1, 17331, and 17414.1 of the Financial Code, relating to financial institutions.

[Approved by Governor August 4, 2008. Filed with
Secretary of State August 4, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2323, Huff. Escrow agents.

Existing law, the Escrow Law, provides for licensing and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation (Fidelity Corporation), which is established as a nonprofit corporation to indemnify its members against loss, and which is funded by fees and assessments on its members. Existing law requires an applicant for a license as an escrow agent or for a Fidelity Corporation Certificate to submit fingerprints for a Department of Justice criminal background check. Existing law also requires an escrow agent to submit to the commissioner, by certified mail, the fingerprints of persons seeking employment with the agent, as specified.

This bill would expand these provisions to also include federal summary criminal history information from the Federal Bureau of Investigation and other related information, and would allow the submission of fingerprint images and related information by escrow agents to be transmitted electronically. The bill would require the Department of Justice to forward the commissioner's or Fidelity Corporation's request to the Federal Bureau of Investigation and to compile and disseminate a response to the requesting party. The bill would require the Department of Justice to charge a fee for these services sufficient to cover its related costs.

The people of the State of California do enact as follows:

SECTION 1. Section 17209 of the Financial Code is amended to read:

17209. An application for a license as an escrow agent shall be signed and verified by an authorized officer of the applicant, and such application shall be accompanied by a certified copy of the articles of incorporation and a copy of the bylaws of the proposed licensee. The application shall set forth:

- (a) The names and addresses of the incorporators, directors, and officers.

(b) An itemized statement of the estimated receipts and expenditures of the proposed first year of operations.

(c) An audited financial statement showing compliance with Section 17210.

(d) The name and address of the person, or persons, meeting the requirements of Section 17200.8, and a statement supporting such persons' qualifications.

(e) The type of business for which the license is requested.

(f) Any other matters the commissioner may require.

(g) An application for a license as an escrow agent filed with the commissioner shall also include a completed statement of identity and questionnaire, as prescribed by the commissioner, for all stockholders, directors, officers, trustees, managers, and other persons participating in the escrow business directly or indirectly compensated by the escrow agent (other than usual and customary employees who file pursuant to subdivision (d) of Section 17414.1 and Section 17419) and shall also include fingerprints and related information for those persons pursuant to subdivision (h). The commissioner shall notify the applicant in writing if any of the information received pursuant to this division shows that a person's employment, participation, or ownership interest would be in violation of Section 17414.1, and the escrow agent shall deny the person the employment or interest. If the application is not satisfactorily amended to remove the deficiency within six months of the first notice of deficiency, the application shall be summarily denied. Persons required to file the employment application pursuant to Section 17419 are not required to file the statement of identity and questionnaire described in this section.

(h) (1) The fingerprint images and related information shall be submitted by the commissioner to the Department of Justice, in a manner established by the Department of Justice, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence of and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) Upon receipt, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received from the commissioner pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the commissioner pursuant to subdivision (p) of Section 11105 of the Penal Code.

(3) The commissioner shall request from the Department of Justice subsequent arrest notification service as provided pursuant to Section 11105.2 of the Penal Code.

(4) The Department of Justice shall charge a fee sufficient to cover the costs of processing the requests pursuant to this subdivision.

SEC. 2. Section 17212.1 of the Financial Code is amended to read:

17212.1. All licensees shall notify the commissioner of any changes in shareholders, directors, officers, trustees, managers, and other persons participating in the escrow business directly or indirectly compensated by the escrow agent (other than usual and customary employees who file pursuant to subdivision (d) of Section 17414.1 and Section 17419), by filing by certified mail, return receipt requested, for those persons a statement of identity and questionnaire, as prescribed by the commissioner for those persons, and fingerprint images and related information, submitted using the process established by the Department of Justice for requesting state and federal summary criminal history information. Persons who have previously submitted fingerprints or fingerprint images and related information to the commissioner may so notify the commissioner and need not submit additional fingerprint images and related information unless requested to do so by the commissioner. The commissioner shall provide written notice to both the licensee and to the person if any of the information received pursuant to this division shows that the person's employment, participation, or ownership interest would be in violation of Section 17414.1, and upon that notification the escrow agent shall deny the person the employment or interest. No person shall have access to trust funds or sign checks or otherwise perform any activities related to the processing of escrow transactions after the licensed escrow agent has been notified by the commissioner that the person's employment, participation, or ownership interest is in violation of Section 17414.1. The requirements set forth in this section are in addition to those required under Section 17213.

The commissioner may by regulation require licensees to file at such times as he or she may specify additional information as he or she may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

SEC. 3. Section 17331 of the Financial Code is amended to read:

17331. (a) An applicant applying for licensure as an escrow agent under this division is required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, for each proposed shareholder, officer, director, trustee, manager, or employee who is to be directly or indirectly compensated by the escrow agent, prior to licensure of the escrow agent by the commissioner.

(b) A shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, is required to complete and execute a Fidelity Corporation Certificate application, prepared and issued by Fidelity Corporation, as a condition of his or her employment or entitlement to compensation, before the person may continue the regular discharge of his or her duties, or have access to moneys or negotiable securities belonging to or in the possession of the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(c) Fidelity Corporation Certificates may also be known as Escrow Agent's Fidelity Corporation Certificates or EAFC Certificates. The certificate at all times remains the property of Fidelity Corporation, and is

not transferable by either a member or employee. The certificate is not a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.

(d) An application for a Fidelity Corporation Certificate shall be in writing and in the form prescribed by Fidelity Corporation. The application may include (1) a fee not to exceed fifty dollars (\$50), (2) two passport-size photographs, and (3) a set of fingerprint images and related information using the process established by the Department of Justice for requesting state summary criminal history information, plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprint images and related information, in a manner established by the Department of Justice pursuant to subdivision (I). The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation, notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation is also entitled to submit a set of fingerprint images and related information in the Department of Justice specified noncriminal applicant fingerprint format for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. A member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(e) The application form shall include a provision for binding arbitration to allow for arbitration of any appeal or dispute as to a decision by Fidelity Corporation concerning the certificate, as follows:

A DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION OR ANY SUBSEQUENT SUSPENSION OR REVOCATION OF THE CERTIFICATE IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM A DECISION BY FIDELITY CORPORATION TO DENY THIS CERTIFICATE APPLICATION OR TO SUSPEND OR REVOKE THE CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW. ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(f) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers,

employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for statements made by Fidelity Corporation in reports or recommendations made pursuant to this division, or for reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3, are not public documents.

(g) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or an officer, agent, or employee of the state or the Department of Corporations for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers, employees, or agents, the state, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, who releases the false information does so with knowledge and malice.

(h) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(j) Section 17331, 17331.1, or 17331.2 does not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate does not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(k) Notwithstanding Section 11105 of the Penal Code, Fidelity Corporation is entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint images and related information submitted to the Department of Justice by the Department of Corporations, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly

compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Corporations shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

(l) (1) The fingerprint images and related information required pursuant to subdivision (d) shall be submitted by the Department of Corporations to the Department of Justice, in a manner established by the Department of Justice, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence of and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) Upon receipt, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Department of Corporations and a fitness determination to Fidelity Corporation pursuant to subdivision (p) of Section 11105 of the Penal Code.

(3) The Department of Justice shall charge a fee sufficient to cover the costs of processing the requests pursuant to this subdivision.

SEC. 4. Section 17414.1 of the Financial Code is amended to read:

17414.1. (a) Any person who has been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years, or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years, of any of the provisions specified in subdivision (b), shall not serve in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, in this state. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed escrow agent commenced prior to January 1, 1992.

(b) Subdivision (a) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for offenses including the following:

(1) Offenses specified in Chapter 18 (commencing with Section 3350) of Division 1.

(2) Offenses specified in Article 4 (commencing with Section 5300) of Chapter 1 of Division 2.

(3) Offenses specified in Article 8 (commencing with Section 14750) of Chapter 4 of Division 5.

(4) Offenses specified in Chapter 3 (commencing with Section 17400), and Chapter 7 (commencing with Section 17700) of Division 6.

(5) Offenses specified in Chapter 6 (commencing with Section 18435) of Division 7.

(6) Offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73).

(7) Offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, controlled substances, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code.

For the purpose of this section, but not Section 17423, an offense does not include a conviction for which the person has obtained a certificate of rehabilitation from a court of competent jurisdiction under Section 1203.4 or 4852.13 of the Penal Code or a similar certificate of rehabilitation obtained in a foreign jurisdiction.

(c) On and after January 1, 1992, any person who seeks employment by, or an ownership interest in, or other participation in the business of a licensed escrow agent shall, as a condition to obtaining that employment, interest, or participation, authorize Fidelity Corporation and the commissioner, or both, to have access to that person's state and federal summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of, or pleaded nolo contendere to, a criminal offense specified in subdivision (b).

(d) On or before the 10th day of employment, each escrow agent shall obtain and forward to the commissioner the fingerprint images and related information of persons seeking employment by an escrow agent. The fingerprint images and related information may be submitted by certified mail, return receipt requested, or transmitted electronically, using the process established by the Department of Justice for requesting state and federal summary criminal history information. Persons who have previously submitted fingerprints or fingerprint images and related information to the commissioner may so notify the commissioner and need not submit additional fingerprint images and related information unless requested to do so by the commissioner. The commissioner shall provide written notice to both the escrow agent and to the person if any of the information received pursuant to this division shows that the person's employment would be in violation of Section 17414.1, and the escrow agent shall deny the person the employment. No person whose employment is in violation of subdivision (a) shall have access to trust funds or sign checks or otherwise perform any activities related to the processing of escrow transactions after the licensed escrow agent has been notified by the commissioner that the person's employment is in violation of subdivision (a).

(e) Any state and federal summary criminal history information obtained pursuant to this section shall be kept confidential and no recipient shall disclose the contents other than for the purpose of determining eligibility for employment by, or acquisition of an ownership interest in, or other participation in the business of a licensed escrow agent.

(f) The authority granted by this section to the commissioner or to Fidelity Corporation shall be in addition to any other authority granted by law to

obtain information about any person who is subject to this division. Nothing in this section shall be construed to limit any authority of the commissioner or Fidelity Corporation otherwise provided by law.

(g) Any person who knowingly violates subdivision (a) or (d), including, but not limited to, any escrow agent who permits employment by, or an ownership interest in, or other participation in the business of an escrow agent in violation of subdivision (a) or (d) shall, upon conviction, be subject to punishment as set forth in Section 17700. Any person who knows of a violation of subdivision (a) or (d) shall immediately report the violation in writing to the commissioner. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

(h) Nothing in this section shall be construed to permit the reinstatement of any person barred by the commissioner pursuant to Section 17423 nor to prohibit the commissioner from bringing any action pursuant to Section 17423.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.